

**BEFORE**

**THE PUBLIC SERVICE COMMISSION OF**

**SOUTH CAROLINA**

**DOCKET NO. 2021-324-WS - ORDER NO. 2022-\_\_**

**MAY \_\_\_\_, 2022**

IN RE: Application of Kiawah Island	)	
Utility, Inc. for Adjustment of Rates	)	
and Charges (Increase) and	)	<b>JOINT PROPOSED ORDER</b>
Modifications to Certain Terms and	)	
Conditions for the provision of	)	
Water and Sewer Service	)	
_____	)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) pursuant to S.C. Code Ann. §§ 58-5-10(4), 58-5-210, 58-5-240, and S.C. Code Ann. Regs. 103-512.4.A, 103-503, 103-712.4.A, and 103-703 for approval of an increase in the monthly water and sewer service charges as set forth in the application (“Application”), and rate schedules filed by Kiawah Island Utility, Inc. (“KIU” or the “Company”) in this docket on November 30, 2021.

**I. PROCEDURAL HISTORY**

Consistent with S.C. Code Ann. § 58-5-240(A), KIU filed a letter with the Commission on October 11, 2021, regarding its intent to file the Application and proposed rate schedule seeking an adjustment in the Company’s rates, charges, classifications, and/or regulations for water and sewer services provided to its service area in South Carolina. KIU filed its Application for an adjustment of its rates and charges on November 30, 2021. The Application was filed pursuant to S.C. Code Ann. § 58-5-240 and S.C. Code Ann. Regs. 103-512.4.A and 103-712.4.A. KIU sought approval of an increase in the monthly water and sewer service charges as described in the rate

schedules included in Exhibit “A” to the Application. KIU proposed a test year of January 1, 2020, to December 31, 2020 (“Test Year”).

The Department of Consumer Affairs (“DCA”) filed a Petition to Intervene on December 7, 2021, pursuant to its authority under S.C. Code Ann. § 37-6-604 to provide representation of the consumer interest before state and federal regulatory agencies when such agencies undertake to fix rates or prices for consumer products or service and may intervene as a party to advocate for the interests of consumers before the Commission. The Chief Hearing Officer granted the DCA’s Petition to Intervene on December 20, 2021. Order No. 2021-156-H.

The Town of Kiawah (“Town”) filed a Petition to Intervene on January 7, 2022. The Town, its residents, and businesses have a vital interest in this proceeding. The Town’s residents and businesses who are residential and commercial water and sewer customers will be affected by the proposed rate increase because it would increase their water and sewer service rates. The Chief Hearing Officer granted the Town’s Petition to Intervene on January 28, 2022. Order No. 2022-8-H.

ORS, by statute, is automatically a party to the proceeding. S.C. Code Ann. § 58-4-10(B).

The procedural schedule in this docket was initially established by the Commission Clerk’s Office on October 13, 2021. On December 8, 2021, the Commission entered Order No. 2021-805 establishing the procedural schedule in this docket and authorizing the Commission Staff to make changes to the prefile dates. On December 14, 2021, the Clerk’s Office issued the Transmittal Letter, Prefile Testimony Letter, and Notice of Filing, and Public Hearings. The Prefile Testimony Letter modified the prefile dates established in Order No. 2021-805 based on the agreement of the Parties. On December 16, 2021, the Clerk’s Office issued the Revised Notice of Filing and Public Hearings, making ministerial corrections. On December 21, 2021, the Clerk’s Office issued the Revised Transmittal Letter and the Second Revised Notice of Filing and Public Hearings

(“Notice”), making additional ministerial corrections to the customer notice, and extending KIU’s time to publish the customer notice to December 29, 2021. The Revised Transmittal Letter also established the bill insert timeline.

The Notice outlined the proposed changes in rates and charges for each customer class, gave notice of public hearings for customers to provide testimony on the Company’s Application, and informed the public as to the date for the merits hearing in this docket. By the Revised Transmittal Letter, the Clerk’s Office instructed the Company to (i) publish the Notice in newspapers of general circulation by December 29, 2021, and (ii) provide Proof of Publication by February 14, 2022. The Clerk’s Office further instructed KIU to provide the Notice to each affected customer via bill inserts or by electronic mail to those customers who have agreed to receive notices by electronic mail on or before January 24, 2022, and to provide certification of such on or before February 14, 2022. Finally, the Clerk’s Office instructed the Company to provide the Notice to the County Administrator in any county where KIU provides services as well as the City Administrator in any city where the Company provides services, and to provide certification of such on or before February 14, 2022. The Clerk’s Office also issued a letter dated December 16, 2022, with deadlines for prefiled testimony.

On January 6, 2022, the Company filed with the Clerk’s Office an Affidavit of Publication of the Notice in a general circulated newspaper. On December 31, 2021, the Company filed with the Clerk’s Office the letters containing the Notice sent to the Town of Kiawah Island and Charleston County. By letter dated February 9, 2022, the Company filed the affidavit of Becky Dennis, Director of Operations, who attested that each affected customer was sent the Notice on January 20, 2022, via U.S. Postal Service First Class Mail.

On January 24, 2022, KIU filed the prefiled direct testimony of Witnesses Craig Sorensen, Donald H. Burkett, and Becky Dennis, and the prefiled direct testimony and exhibits of Witnesses

Charles Loy and Mujeeb Hafeez. The Company moved for protective treatment regarding certain information contained within Witness Dennis and Witness Hafeez's testimonies, and filed a redacted version of their testimonies with the Commission. On February 10, 2022, following consultation with ORS, the Company withdrew its request for designation of Witness Dennis' prefiled testimony as confidential, and publicly prefiled the Corrected Direct Testimony of Becky Dennis. On April 1, 2022, KIU filed Corrected Direct Testimony Exhibits of Becky Dennis with the Commission. The Commission denied KIU's motion for protective order with respect to Witness Hafeez's testimony on the grounds that no basis under FOIA protected the salary information KIU sought to protect.<sup>1</sup> However, the Commission subsequently allowed KIU to file revised testimony omitting compensation details for two employees. Order No. 2022-243. The Company filed the Revised Direct Testimony of Mujeeb Hafeez on March 28, 2022.

The DCA filed the prefiled direct testimony and exhibits of Witness Aaron Rothschild on February 24, 2022. ORS filed the prefiled direct testimony and exhibits of Witnesses David J. Garrett, Glenn A. Watkins, David M. Herpel, Daniel P. Hunnell, II, and Dawn M. Hipp and the direct testimony of Aaron K. Rabon.<sup>2</sup> The Town filed the prefiled direct testimony and exhibit of Witness John D. Labriola.

On March 10, 2022, the Company filed the prefiled rebuttal testimony and exhibits of Witnesses Douglas Carlisle, Craig Sorensen, Becky Dennis, and Benjamin E. Nicholson, V, and the prefiled rebuttal testimony of Donald H. Burkett and Mujeeb Hafeez.

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<sup>1</sup> The Commission denied the Company's request with respect to Witness Hafeez on February 24, 2022. *See* Order No. 2022-145, and . Order No. 2022-161.

<sup>2</sup> ORS subsequently filed the Revised Direct Testimony and Exhibits of Dawn M. Hipp on March 30, 2022, and the Second Revised Direct Testimony and Exhibits of Dawn M. Hipp on April 1, 2022. The only changes were with respect to redactions. The Second Revised Direct Testimony and Exhibits of Dawn M. Hipp were moved into the record by ORS at the hearing on April 4, 2022.

On March 28, 2022, ORS filed the prefiled surrebuttal testimony and exhibits of Witnesses Dawn M. Hipp and Glenn A. Watkins and the prefiled surrebuttal testimony of David M. Herpel, Aaron K. Rabon, Daniel P. Hunnell, II, and David J Garrett. The DCA filed the prefiled surrebuttal testimony of Witness Aaron Rothschild.

The Commission held a public hearing for customer testimony on Monday, March 21, 2022, beginning at 9:00 a.m., with the Honorable Justin T. Williams presiding.<sup>3</sup> One public witness provided comments on the Application. As no additional witnesses registered to speak, the Commission concluded the public hearing and cancelled the remaining public hearings originally scheduled in this docket.

Pursuant to S.C. Code Ann. §1-23-320(F) (Supp. 2021), and all other applicable statutes and regulations, ORS filed a Settlement Agreement (“Settlement Agreement”) signed by the ORS, the Town, and KIU (“Settling Parties”) on March 28, 2022. The DCA, while not a signatory to this Settlement Agreement, advised the Commission that it did not oppose approval of this Settlement Agreement by letter on the same day. The Settlement Agreement is attached hereto as Order **Exhibit 1**. The Settlement Agreement constituted an agreed compromise of all positions advanced by the Parties. The Settlement Agreement provided that the Parties agreed to stipulate into the record the prefiled testimony and exhibits of all witnesses without objection, change, amendment, or cross-examination.<sup>4</sup> The Settlement Agreement resolved all issues in dispute between the Parties.

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<sup>3</sup> The pre-registration sheet for the public hearing was accepted into the record and marked as Hearing Exhibit 1.

<sup>4</sup> The Parties agreed to stipulate into the record the direct, rebuttal and surrebuttal testimony and exhibits of KIU Witnesses Donald H. Burkett, Charles Loy, Douglas H. Carlisle, Benjamin E. Nicholson, and Mujeeb Hafeez, ORS Witnesses Dawn M. Hipp, Daniel P. Hunnell, David M. Herpel, Aaron K. Rabon, Glenn A. Watkins, and David J. Garrett, and the Town Witness John D. Labriola. The DCA stipulated the testimony of Witness Aaron Rothschild. The witnesses were excused from presenting their prefiled merits testimony in-person. Order No. 2022-23-H. Settlement Witnesses Dawn M. Hipp, Craig Sorensen, and Becky Dennis appeared in-person. Verifications were provided by the respective Parties for these witnesses.

Consistent with the Settlement Agreement, on March 31, 2022, ORS filed the prefiled Settlement Testimony of Witness Dawn M. Hipp, and KIU filed the prefiled Settlement Testimony of Witnesses Craig Sorensen and Becky Dennis. Witness Sorensen also prefiled Settlement Testimony Exhibit 1, which was the Settlement Agreement. The other terms of the Settlement Agreement are described in further detail below. On March 29, 2022, following a status conference with the Parties, the Chief Hearing Officer entered Chief Hearing Officer Directive Order No. 2022-23-H, which provided among other things, that the settlement hearing in this case would be held on Monday, April 4, 2022, at 10:00 a.m.

The settlement hearing began on Monday, April 4, 2022, at 10:00 a.m., with the Honorable Justin T. Williams presiding. Charles L.A. Terreni, Esquire, Scott Elliott, Esquire, and Vincent Sheheen, Esquire represented the Company. Alexander W. Knowles, Esquire, and Donna L. Rhaney, Esquire represented ORS. Roger P. Hall, Esquire, and Connor J. Parker, Esquire represented the DCA. John J. Pringle, Jr., Esquire represented the Town.

At the start of the hearing, the Settlement Agreement was accepted into the record as Hearing Exhibit 16 as an exhibit to KIU Witness Sorensen's Settlement Testimony. Settlement Witnesses Hipp, Dennis, and Sorensen appeared before the Commission and provided testimony in-person and answered questions from the Commission. All other Witnesses that prefiled testimony in this docket were otherwise excused from appearing at the merits hearing and their prefiled testimonies were accepted into the record, including any corrections, as if given orally from the stand, and any prefiled exhibits and appendices were entered into the record as hearing exhibits.

## **II. STATUTORY STANDARDS AND REQUIRED FINDINGS**

KIU is a public utility, as defined by S.C. Code Ann. § 58-5-10(4) (2015), providing water and sewer service to customers on Kiawah Island in Charleston County, South Carolina.

Application ¶ 2. The Company is a subsidiary of SouthWest Water Company (“SWWC”). KIU’s last general rate case was Docket No. 2018-257-WS. The Company’s current rates now in effect were approved in Commission Order No. 2019-288 issued on April 25, 2019, in Docket No. 2018-257-WS. The Company proposed a test year of January 1, 2020, to December 31, 2020. Application ¶ 6. None of these items was contested by any party to this proceeding.

The Commission is vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this state, and to ascertain and fix such just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, observed and followed by every public utility in this state. S.C. Code Ann. § 58-5-210. “[R]ate-making is not an exact science, but a legislative function involving many questions of judgment and discretion.” *Parker v. S.C. Pub. Serv. Comm’n*, 280 S.C. 310, 312, 313 S.E.2d 290, 291 (1984).

Rates are established based on test year figures intended to reflect typical conditions. Where an unusual situation indicates that the test year figures are atypical, the Commission should adjust the test year data. *Parker v. S.C. Pub. Serv. Comm’n*, 280 S.C. 310, 312, 313 S.E.2d 290, 292 (1984). “[A]djustments for known and measurable changes in expenses may be necessary in order that the resulting rates reflect the actual rate base, net operating income, and cost of capital. The adjustments are within the discretion of the Commission and must be known and measurable within a degree of reasonable certainty. Absolute precision, however, is not required.” *Hamm v. S.C. Pub. Serv. Comm’n*, 309 S.C. 282, 291, 422 S.E.2d 110, 115 (1992) (citing *Michaelson v. New England Tel. & Tel. Co.*, 404 A.2d 799 (R.I. 1979)).

“Although the burden of proof of the reasonableness of all costs incurred which enter into a rate increase request rests with the utility, the utility’s expenses are presumed to be reasonable and incurred in good faith. This presumption does not shift the burden of persuasion but shifts the

burden of production on to the . . . contesting party to demonstrate a tenable basis for raising the specter of imprudence. . . . The ultimate burden of showing every reasonable effort to minimize . . . costs remains on the utility.” *Utils. Servs. of S.C., Inc. v. S.C. Off. of Regul. Staff*, 392 S.C. 96, 109–10, 708 S.E.2d 755, 762-63 (2011) (quoting *Hamm v. S.C. Pub. Serv. Comm’n*, 309 S.C. 282, 286, 422 S.E.2d 110, 112 (1992)). “[T]he PSC is entitled to create incentives for utilities to improve their business practices. Accordingly, the PSC may determine that some portion of an expense actually incurred by a utility should not be passed on to consumers.” *Id.* at 105.

The Commission must determine a fair rate of return that the utility should be allowed the opportunity to earn after recovery of the expenses of utility operations. The legal standards for this determination are set forth in *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03(1944) (“*Hope*”) and *Bluefield Water Works and Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679, 692-93 (1923) (“*Bluefield*”).

In *Bluefield*, the United States Supreme Court held that:

What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting the opportunities for investment, the money market and business conditions generally.

*Bluefield*, 262 U.S. at 692-93.

The Commission and South Carolina appellate courts have consistently applied the principles set forth in *Bluefield* and *Hope*. See *Southern Bell Tel. & Tel. Co. v. Pub. Serv. Comm’n*



of S.C., 270 S.C. 590, 244 S.E. 2d 278 (1978). “[U]nder the statutory standard of ‘just and reasonable’ it is the result reached not the method employed which is controlling . . . [T]he fixing of ‘just and reasonable’ rates, involves the balancing of investor and the consumer interests.” *So. Bell*, 270 S.C. at 596, 244 S.E.2d at 281 (quoting *Hope*, 320 U.S. at 602-03). “South Carolina law does not require the Commission to use any particular price-setting methodology.” *Heater of Seabrook v. Pub. Serv. Comm’n*, 324 S.C. 56, 64 (1996) (citing *Nucor Steel v. Pub. Serv. Comm’n*, 312 S.C. 79 (1994)). “[T]he Public Service Commission has wide latitude to determine an appropriate rate-setting methodology” and must “employ a methodology tailored to the facts and circumstances before it.” *Id.* at 64.

The Commission’s determination of a fair rate of return must be documented fully in its findings of fact and based exclusively on reliable, probative, and substantial evidence on the whole record. *Porter v. S.C. Pub. Serv. Comm’n*, 332 S.C. 93, 98, 504 S.E.2d 320, 323 (1998). “[T]he PSC is both entitled and required to consider the evidence presented to it on the formal record[.]” *Utils. Servs.*, 392 S.C. at 111, 708 S.E.2d at 763. The Commission does not inspect, audit, or examine public utilities. S.C. Code Ann. § 58-3-60. The Commission’s ultimate determination cannot be based upon surmise, conjecture, or speculation. *See Herndon v. Morgan Mills, Inc.*, 246 S.C. 201, 209, 143 S.E.2d 376, 380 (1965).

The findings of facts and conclusions of the Commission herein reflect these standards and the Commission employed the same upon review of the evidence in the record.

### **III. REVIEW OF THE EVIDENCE AND EVIDENTIARY CONCLUSIONS**

#### **A. Issues Addressed Under Settlement Agreement**

The Settlement Agreement executed by ORS, the Company, and the Town addressed all issues in this proceeding and constituted a compromise resolution of all issues in this proceeding. The DCA, while not a signatory to the Settlement Agreement, does not object to the Settlement

Agreement. Settlement Agreement ¶ 3; Letter of March 28, 2022. Pursuant to the Settlement Agreement, the Settling Parties agree to accept and adopt all recommendations, adjustments and customer protections in the testimony and exhibits of ORS witnesses unless specifically modified by the Settlement Agreement without prejudice to the position of any party in future proceedings. Settlement Agreement ¶ 4. The Settling Parties agree that this Settlement Agreement is reasonable, is in the public interest, and is in accordance with law and regulatory policy. Settlement Agreement ¶ 24.

1. Return on Common Equity, Revenue, and Capital Structure

The Settlement Agreement addressed the three components of KIU's cost of capital: capital structure, return on equity ("ROE"), and cost of debt. DCA Witness Rothschild found the ROE for KIU should be between 6.78% and 8.16%, and he recommended a midpoint of 7.47%. (Rothschild Direct 4:19-21). ORS Witness Garrett recommended an ROE of 8.44% based on his range of 6.43%-8.44%. (Garrett Direct 30:1-3). Company Witness Carlisle recommended a cost of equity of 9.35%. He found an overall ROE range between 7.74% and 9.60%; however, due to his expectations for the economy over the next 2 years, he recommended an "inner range" of 8.43% to 9.35%. (Carlisle Rebuttal 5:11-16). The Settlement Agreement included an authorized ROE of 8.69%, which is within the recommended range of Witness Carlisle. The Settlement Agreement included a capital structure for KIU of 46.81% debt and 53.19% equity. Settlement Agreement ¶ 5. The capital structure in the Settlement Agreement is consistent with the testimony of Witnesses Carlisle and Garrett. (Carlisle Rebuttal 4:20-22; Garrett Direct 62:20-63:8). DCA Witness Rothschild recommended a capital structure of 49.86% equity and 50.14% debt based on the average common equity ratios of the companies in his proxy group. (Rothschild Surr. 17:18-19). We conclude these terms reflect a reasonable compromise of the positions of the Parties, are

reasonable under the Settlement Agreement taken and viewed as a whole, and are supported by substantial evidence of record.

The Settling Parties agreed to a 4.57% cost of debt. Settlement Agreement ¶ 5. This corresponds to the interest rate in KIU's intercompany loan agreement with its parent company and is consistent with the recommendations in testimony of Witnesses Carlisle and Garrett. (Garrett Direct 6:21–22; Carlisle Rebuttal 4:3–11). DCA Witness Rothschild recommended a 3.39% cost of debt based on the cost rate of certain unsecured bond notes issued by SWWC in October 2020. (Rothschild Direct 23:5–7). We conclude this term reflects a reasonable compromise of the positions of the Parties, is reasonable under the Settlement Agreement taken and viewed as a whole, and is supported by substantial evidence of record.

The Company's Application requested that the Commission set rates for the Company according to the operating margin method. (Application ¶ 15). The Parties agree that for this proceeding KIU's rates shall be set according to the return on rate base method. Settlement Agreement ¶ 6. This is consistent with the testimony of Witnesses Garrett and Rothschild that the rate of return method is appropriate because of the size of KIU's rate base and provides an objective and measurable framework to determine the return. (Garrett Direct 6:6–12, 13:6–7; Rothschild Direct 6:18–19; *see also* Hipp Settlement 4:7–10). *Heater of Seabrook v. Pub. Serv. Comm'n*, 324 S.C. 56, 64–65 (1996) (explaining that operating margin treatment “is particularly appropriate where a utility's rate base has been substantially reduced” but “is less appropriate for utilities that have large rate bases and need to earn a rate of return sufficient to obtain the necessary equity and debt capital that a larger utility needs for sound operation.”). We conclude this term of the Settlement Agreement reflects a reasonable compromise of the positions of the parties and is reasonable under the terms of the Settlement Agreement taken and viewed as a whole and is supported by substantial evidence of record.

The Settlement Agreement adopts ORS’s recommendations regarding rate design. Settlement Agreement ¶ 7. The evidentiary support for these rate design recommendations is provided in the testimony of Witness Watkins. Witness Watkins recommended that the fixed charges for each customer class remain at their current levels, that all sewer charges remain at their current levels, and that the increase in revenues be allocated to volumetric water rates. (Watkins Direct 5:3–8). The Settling Parties agree the Settlement Agreement sets forth the allocation of the revenue increase among customer classes according to ORS’s rate design recommendations. Settlement Agreement ¶ 8 & Attachment B; *see also* Dennis Settlement 2:5. We conclude this term reflects a reasonable compromise of the positions of the Parties, is reasonable under the Settlement Agreement taken and viewed as a whole, and is supported by substantial evidence of record.

## 2. Other Adjustments

The Company requested additional incremental pipeline costs related to the secondary water line (“Secondary Pipeline Project”) in the amount of \$2.4M. The Settling Parties agreed to establish a regulatory asset in the amount of \$1.8M for the Secondary Pipeline Project costs arising from an unforeseen failure of the first drill attempt. The amortization period of the regulatory asset is thirty (30) years. The regulatory asset will not be placed in rate base and will not earn a return or accrue carrying cost. (Sorensen Settlement 3:5–8). KIU agrees that it will not be eligible in any future proceeding to seek recovery of any additional incremental cost relating to or arising out of the construction of the Secondary Pipeline Project. Settlement Agreement ¶ 10.

Prior to the Settlement Agreement, the Settling Parties submitted considerable testimony with varying positions relating to the recovery of the costs of the Secondary Pipeline Project. ORS Witness Hipp testified that the costs of the Secondary Pipeline Project stemmed from a settlement agreement between KIU, its contractor, and their insurers. Witness Hipp asserted that the costs

should not be the responsibility of customers because the Company's responses to ORS discovery and the Federal District Court order in the underlying litigation do not support the Company's claims that it took the steps necessary to carefully identify risk and mitigate potential financial losses by securing necessary insurance coverage. (Hipp Direct 14:3–6; *see also* Labriola Direct 5–6). Witness Hipp also testified that the settlement costs are not used and useful investment, which KIU Witness Sorensen disputed. (Hipp Direct 5:19; Sorensen Rebuttal 6:14–15). KIU Witness Nicholson testified that the settlement was a reasonable and prudent outcome of a highly contested and very complex construction and insurance dispute, and that it in no way means KIU did anything wrong such that it should be disallowed from recovering these costs. (Nicholson Rebuttal 2:17–20). Witness Sorensen testified that KIU made every effort to mitigate risk and ensure proper insurance was obtained by the appropriate party and that the settlement was a reasonable and prudent business decision to minimize financial impacts to customers. (Sorensen Rebuttal 8:14–15, 10:1–14). We conclude these terms of the Settlement Agreement regarding treatment of the Secondary Pipeline Project costs reflect a reasonable compromise of the positions of the Parties and are reasonable in view of the evidence of record presented by Witnesses Hipp, Labriola, Sorensen, and Nicholson relating to the recoverability of the costs associated with the Secondary Pipeline Project. (*See also* Sorensen Settlement 4:13–15; Dennis Settlement 3:5; Hipp Settlement 4:13).

The Settlement Agreement accepts KIU's methodology in calculating its Cash Working Capital adjustment, which includes purchased water and bad debt, and requires the Company to conduct a Lead-Lag study and file it with the Commission with the Company's application in the next rate proceeding. Settlement Agreement ¶ 11. ORS retains the right to review and make recommendations related to KIU's request for cost recovery related to the Lead-Lag study. Settlement Agreement ¶ 11. These provisions of the Settlement Agreement are supported in the

record by the testimony of Witnesses Burkett, Herpel, and Hipp. (Burkett Rebuttal 2–4; Herpel Surrebuttal 3:22–4:1; Hipp Settlement 3–4). We conclude these terms reflect a reasonable compromise of the positions of the Parties, are reasonable under the Settlement Agreement taken and viewed as a whole, and are supported by substantial evidence of record.

The Settling Parties agree to remove from KIU’s allowable share of overhead expenses 50% of the salary, benefits, and taxes for SWWC’s two highest compensated executives, and the adjustment is non-precedential. Settlement Agreement ¶ 12; Attachment A, Adjustment 2G. Witness Hipp testified that removing 50% of the salary, benefits, and taxes for SWWC’s four highest compensated executives was appropriate given the focus of these executives on maximizing profit rather than customer service and minimizing customer rates. (Hipp Direct 15–16). KIU Witness Hafeez testified that executives have fiduciary duties to shareholders and customers, that all compensation directly tied to financial performance had been excluded from KIU’s request, and that instances where the Commission has adopted this adjustment for larger, publicly traded utilities were not applicable to KIU. (Hafeez Rebuttal 2–8). We conclude this term of the Settlement Agreement reflects a reasonable compromise of the positions of the Parties and is reasonable in view of the evidence of record presented by Witnesses Hipp and Hafeez relating to the recoverability of executive compensation-related overhead costs.

The Settling Parties agree to a non-precedential adjustment to include in KIU’s allowable share of overhead expenses 25% of the expenses related to the SWWC Corporate Development Team. Settlement Agreement ¶ 13; Attachment A, Adjustment 2G. Witness Hipp testified that disallowance of the Corporate Development Team costs was appropriate because customers should not bear 100% of the costs and financial risks of the Company’s acquisition efforts, and such efforts are not related to the continued provision of safe and reliable service to KIU customers. (Hipp Direct 18:15–19). Witness Hipp also testified that it was not clear these expenditures

resulted in net quantifiable benefits to customers, and that the Commission has historically disallowed merger transaction expenses in customer rates. (Hipp Surrebuttal 18–19). Witness Hafeez testified that the Team’s efforts have resulted in direct, net benefits to KIU customers through the growth of SWWC and corresponding reduction in KIU’s allocable share of overhead. (Hafeez Rebuttal 10–12). We conclude this term of the Settlement Agreement reflects a reasonable compromise of the positions of the Parties, is reasonable in view of the terms of the Settlement Agreement taken and viewed as a whole and is reasonable in view of the evidence of record presented by Witnesses Hipp and Hafeez relating to the recoverability of Corporate Development Team-related overhead costs.

The Settling Parties also agreed to accept the recommendation of the Company to amortize rate case expenses over two years. Settlement Agreement ¶14. The Settling Parties further agreed the amount of rate case expenses to be amortized over two years would be calculated through the date of the hearing. *Id.* Support for this adjustment in the record is provided in the testimony of Witness Burkett. (Burkett Rebuttal 5–6). A two-year amortization period also corresponds to the duration of the Settlement Agreement’s “stay out” provision. *See* Settlement Agreement ¶ 18. We conclude this term reflects a reasonable compromise of the positions of the Parties, is reasonable under Settlement Agreement taken and viewed as a whole, and is supported by substantial evidence of record.

The Settlement Agreement also provided that the final revenue increase and corresponding rates would be determined based on rate case expenses updated through the completion of the hearing. The hearing was completed on April 4, 2022. At the hearing, and consistent with the Settlement Agreement, Hearing Exhibit 14 was reserved for a late-filed exhibit to be filed under seal by the Company consisting of rate case expenses updated through the hearing and supporting documentation. (Tr. p. 48). After providing its updated rate case expense information and support

to ORS, and following ORS's review, the Company filed Hearing Exhibit 14 on April 13, 2022, demonstrating \$318,938.17 of allowable rate case expenses.<sup>5</sup> We conclude based on the substantial evidence of record that KIU's demonstrated allowable rate case expenses are \$318,938.17.

The Settling Parties agree to use KIU's Test Year revenues of \$39,551 for Account 440080 for Fire Hydrant Service. Settlement Agreement ¶ 15; Attachment A, Adjustment 1C. This is the Company's actual Test Year revenue for fire hydrant rentals. (Hunnell Direct 10:3–4). We conclude this term of the Settlement Agreement reflects a reasonable compromise under the terms of the Settlement Agreement as a whole and is reasonable in view of the evidence of record.

The Settling Parties agreed to adjustments to gross receipts tax, licensing fees, income taxes, customer growth, cash working capital, and interest expense to reflect the terms of the Settlement Agreement and a ROE of 8.69%. Settlement Agreement ¶ 16.

### 3. Other Terms

KIU will file its next rate case under rate of return methodology and will include rate of return information in its Application. Settlement Agreement ¶ 17. This term is consistent with the testimony of Witnesses Rothschild and Garrett. (Rothschild Direct 8:4–12; Garrett Direct 12–16). We conclude this term reflects a reasonable compromise of the positions of the Parties, is reasonable under Settlement Agreement taken and viewed as a whole, and is supported by substantial evidence of record.

KIU agreed in the Settlement Agreement that it would not file another general rate case before eighteen (18) months from the date the final order is issued in this proceeding, except where necessary due to unforeseen extraordinary economic or financial conditions which may include, but not be limited to, changes in tax rates, such that new rates would not be effective prior to

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<sup>5</sup> The Company's request for confidential treatment of the supporting invoices for its rate case expenses detailed in Hearing Exhibit 14 was granted by Order No. 2022-36-H.



twenty-four (24) months from the date the final order is issued. Settlement Agreement ¶ 18. This “stay out” does not apply to filings related to pass-through charges of purchased water. *Id.* We conclude this term reflects a reasonable compromise of the positions of the Parties, is reasonable under Settlement Agreement taken and viewed as a whole, and is supported by substantial evidence of record.

The Settlement Agreement provided that the Company shall conduct a Shared Service Study using a third-party consultant to evaluate the contract and shared services provided to KIU from SWWC, SWWC affiliates, and the Corporate Shared Services business unit. Settlement Agreement ¶ 22. Witness Hipp filed Settlement Testimony in support of this provision. (Hipp Settlement 3–4). At the hearing, Witness Sorensen’s testimony supported that the Company is proactively working to ensure these studies are conducted at the lowest feasible cost. We conclude this term reflects a reasonable compromise of the positions of the Parties, is reasonable under Settlement Agreement taken and viewed as a whole, and is supported by substantial evidence of record.

The Settlement Agreement included Attachments A and B showing the Operating Experience, Rate Base, and Rate of Return under the terms of the Settlement Agreement based on rate case expenses calculated as of April 12, 2022. Attachment A provided a summary of the revenue requirement and Attachment B provided the corresponding rates. Attachments A and B to the Settlement Agreement, under the terms of the Settlement Agreement, were subject to update for reasonable and prudent rate case expenses incurred through the date of the hearing. Settlement Agreement ¶ 5 at n.1. Evidence of the Company’s reasonable and prudent rate case expenses incurred through the date of the hearing was reviewed and audited by ORS and is reflected in Hearing Exhibit 14. Order **Exhibit 2** reflects the Operating Experience, Rate Base and Rate of Return for KIU corresponding to and reflecting all terms of the Settlement Agreement as described

in Settlement Agreement Attachment A as updated to reflect KIU's allowable rate case expenses demonstrated in Hearing Exhibit 14 and reflects KIU's resulting revenue requirement. Order **Exhibit 3** reflects the resulting rates for each customer class corresponding to the revenue requirement and rate design consistent with the terms of the Settlement Agreement Attachment B as updated to reflect KIU's allowable rate case expenses demonstrated in Hearing Exhibit 14. As calculated in Order **Exhibit 3**, KIU's resulting operating margin is 10.89%

#### **B. Commission Conclusion**

The Commission, as the finder of fact, has carefully evaluated the evidence submitted in this case related to the issues resolved by the Settlement Agreement. The Commission concludes that it is just and reasonable and a fair balancing of the interests of the Company and its customers to approve the Settlement Agreement. No party opposes the Settlement Agreement, and the Town, ORS, and Company support it as a just and reasonable resolution of all issues within this proceeding. Order **Exhibit 2** reflects the Operating Experience, Rate Base and Rate of Return for KIU corresponding to and reflecting all terms of the Settlement Agreement as updated by Hearing Exhibit 14 for final rate case expenses and reflects KIU's resulting revenue requirement. Order **Exhibit 3** reflects the resulting rates for each customer class corresponding to the revenue requirement and rate design consistent with the terms of the Settlement Agreement and as updated to reflect Hearing Exhibit 14's final rate case expenses. KIU's resulting operating margin is 10.89%

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the discussion as set forth herein, and the record of the instant proceeding, the Commission makes the following Findings of Fact and Conclusions of Law:

1. KIU is a public utility providing water and sewer services in its assigned service area located in Charleston County. The Commission is vested with authority to regulate rates of

every public utility in this state and to ascertain and fix just and reasonable rates for service. S. C. Code Ann. § 58-5-210 *et. seq.* KIU's operations in South Carolina are subject to the jurisdiction of the Commission.

2. The Application, testimony, exhibits, affidavits of publication, and public notices submitted by the Company comply with the procedural requirements of the South Carolina Code of Laws and the Regulations promulgated by this Commission.

3. The appropriate test year period for this proceeding, as selected by KIU, is January 1, 2020, to December 31, 2020. KIU proposed this test year in its Application, and it was used by the Parties in this proceeding. No party contested the use of the test year proposed by KIU in its Application, and both KIU and ORS submitted evidence regarding revenues, expenses, and proposed adjustments using the test year ending December 31, 2020.

4. The Commissions finds, for the reasons discussed above, that the Settlement Agreement attached as Order **Exhibit 1** is fair, just, and reasonable for KIU and its customers. The terms of the Settlement Agreement, and as updated consistent with the terms of the Settlement Agreement to reflect reasonable and prudent rate case expenses as demonstrated in Hearing Exhibit 14, result in rates that are fair, just, and reasonable.

5. The Commission finds that the adjustments and customer protections as discussed in the Settlement Agreement and previously in this Order are just and reasonable.

6. KIU's rates should be set according to the rate base rate of return method. KIU should also file its next rate case under the rate of return methodology and include rate of return information in that application.

7. The Commission finds that granting KIU the opportunity to earn an 8.69% ROE is just and reasonable. The Commission also finds that the cost of debt of 4.57% and a capital structure consisting of 46.81% debt and 53.19% equity in the Settlement Agreement is just and

reasonable. These figures are supported by the reliable, probative, and substantial evidence on the whole record.

8. KIU's operating margin is 10.89% as calculated and reflected in Order **Exhibit 2**.

9. For the reasons discussed herein, the Commission finds the revenue requirement and adjustments detailed in Order **Exhibit 2** are just and reasonable, reflect the terms of the Settlement Agreement, and are based upon credible, substantial evidence in the record, are fair and reasonable, consistent with the terms of the Settlement Agreement, and will allow KIU to continue to provide its customers with safe and reliable water and wastewater service.

10. The resulting rates for service detailed in Order **Exhibit 3** are consistent with Order **Exhibit 2**, are just and reasonable, reflect the terms of the Settlement Agreement, and are based upon credible, substantial evidence in the record.

**IT IS THEREFORE ORDERED THAT:**

1. The Settlement Agreement executed by the Settling Parties is hereby accepted and adopted by the Commission.

2. The revenue requirement and adjustments detailed in Order **Exhibit 2** are hereby accepted and adopted.

3. KIU's rates in this case shall be set according to the rate of return methodology, and KIU shall file its next rate case under the rate of return methodology.

4. KIU is authorized the opportunity to earn a ROE of 8.69%.

5. KIU's capital structure is 46.81% debt and 53.19% equity.

6. KIU's cost of debt is 4.57%.

7. KIU's resulting return on rate base is 6.76%.

8. Pursuant to S.C. Code Ann. § 58-5-240(H), an operating margin of 10.89% as calculated and reflected in Order **Exhibit 2** is approved for KIU.

9. The resulting rates for service provided in Order **Exhibit 3** are hereby approved, accepted, and adopted.

10. The rates and charges approved and resulting from this Order may be charged for service provided on or after the date of this Order.

11. The Company shall provide notice of the rate adjustments approved herein to its customers either before (such as a special mailing) or contemporaneously (such as a conspicuous notice on the bill or by a bill insert) with the first bill rendered after the new rates take effect. The schedules will be deemed filed with the Commission under S.C. Code Ann. § 58-5-240.

12. Revised tariffs shall be filed within ten (10) days of receipt of this Order, consistent with the Commission's Rules and Regulations. The tariffs should be electronically filed in a text searchable PDF format using the Commission's DMS System (<https://dms.psc.sc.gov>). An additional copy should be sent via email to [etariff@psc.sc.gov](mailto:etariff@psc.sc.gov) to be included in the Commission's ETariff System (<http://etariff.psc.sc.gov>). Future revisions should be made using the ETariff System. The tariffs shall be consistent with the findings of this Order and agreements with the other parties to this case. The rates, fees, and charges in the revised tariffs shall be consistent with the adjustments as stipulated between the Settling Parties and the 8.69% ROE authorized in this Order.

13. KIU shall not file for a general rate case before eighteen (18) months from the date the final order is issued in this proceeding, such that new rates will not be effective prior to twenty-four (24) months from the date the final order is issued in this proceeding, except where necessary due to unforeseen extraordinary economic or financial conditions which may include, but not be limited to, changes in tax rates. This term does not apply to filings related to pass-through charges of purchased water.

14. The Company shall submit future Annual Reports for water and sewer in accordance with the Commission's instructions.

15. The Company's books and records shall continue to be maintained according to the NARUC Uniform System of Accounts.

16. KIU shall maintain its performance bonds currently on file with the Commission in the amounts of \$350,000 for sewer operations and \$350,000 for water operations in compliance with S.C. Code Ann. § 58-5-720.

17. KIU shall comply with all terms of the Settlement Agreement not specifically enumerated in the ordering provisions above.

18. This Order shall remain in full force and effect until further Order of this Commission.

BY ORDER OF THE COMMISSION:

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Justin Williams, Chairman

ATTEST:

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Florence P. Belser, Vice-Chairman